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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AARON SCHRUM and JENNIFER SCHRUM Plaintiffs, vs. SAN DIEGO UNIFIED SCHOOL DISTRICT, Defendant.	CASE NO. 08 CV 0911 JLS (BLM) DEFENDANT SAN DIEGO UNIFIED SCHOOL DISTRICT'S ANSWER TO PLAINTIFFS' COMPLAINT FOR ATTORNEY'S FEES AND COSTS UNDER INDIVIDUAL WITH DISABILITIES EDUCATION ACT (20 U.S.C. §1415(i)(3) and Cal. Educ. Code §56507)

Defendant San Diego Unified School District ("District") hereby answers the Complaint filed by plaintiffs Aaron Schrum and Jennifer Schrum ("Plaintiffs"), and asserts its affirmative defenses.

INTRODUCTION

1. In response to Paragraph 1 of the Complaint, the District admits that Plaintiffs are the parents of a child with a disability. The District asserts that the cited provisions of 20 U.S.C. §1400 *et seq.* speak for themselves and denies all allegations within paragraph 1 that attempt to characterize, paraphrase or expand on the language in said provisions. Except for this assertion and as specifically admitted, the District denies each and every allegation contained in paragraph 1

JURISDICTION AND VENUE

2. In response to Paragraph 2 of the Complaint, the District admits that this action arises under the laws of the United States and the State of California. The District also asserts that

the cited provisions of 20 U.S.C. §1415(i), 28 U.S.C. §1331, and California Education Code §56507(b) speak for themselves and denies all allegations within paragraph 2 that attempt to characterize, paraphrase or expand on the language in said provisions.

3. In response to Paragraph 3 of the Complaint, the District admits that it is located within the Southern District of California and all events which are the subject of this Complaint took place within the Southern District of California. The District also asserts that the cited provision of 28 U.S.C. §1391(b) speaks for itself and denies all allegations within paragraph 3 that attempts to characterize, paraphrase or expand on the language in said provisions

PARTIES

4. In response to Paragraph 4 of the Complaint, the District admits the allegations contained therein.

5. In response to Paragraph 5 of the Complaint, the District admits the allegations contained therein.

STATUTORY SCHEME UNDER IDEA

6. In response to Paragraph 6 of the Complaint, the District notes that it contains no factual averments to which the District must respond and merely sets forth Plaintiffs' summary of the law which speaks for itself.

7. In response to Paragraph 7 of the Complaint, the District notes that it contains no factual averments to which the District must respond and merely sets forth Plaintiffs' summary of the law which speaks for itself.

CLAIM FOR RELIEF

8. In response to Paragraph 8 of the Complaint, the District admits the allegations contained therein.

9. In response to Paragraph 9 of the Complaint, the District admits the allegations contained therein.

10. In response to Paragraph 10 of the Complaint, the District admits the allegations contained therein.

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11. In response to Paragraph 11 of the Complaint, the District admits the allegations contained therein.

12. In response to Paragraph 12 of the Complaint, the District denies each and every allegation contained therein.

13. In response to Paragraph 13 of the Complaint, the District admits the allegations contained therein.

14. In response to Paragraph 14 of the Complaint, the District denies each and every allegation contained therein.

15. In response to Paragraph 15 of the Complaint, the District denies each and every allegation contained therein.

16. In response to Paragraph 16 of the Complaint, the District denies each and every allegation contained therein.

17. In response to Paragraph 17 of the Complaint, the District denies each and every allegation contained therein.

18. In response to Paragraph 18 of the Complaint, the District denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

19. Plaintiffs' claim for attorney's fees and costs under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, fails to state a claim upon which relief may be granted against the District.

SECOND AFFIRMATIVE DEFENSE

(Discharge of Obligations)

20. Plaintiffs are barred from relief under the Complaint because, prior to the commencement of this action, the District paid, satisfied or otherwise discharged all duties and obligations owed to Plaintiffs under applicable federal and state laws including the Individuals

with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, and/or the California Education Code §56000 *et seq*.

THIRD AFFIRMATIVE DEFENSE

(Damages Not Recoverable)

21. Plaintiffs' Complaint seeks damages not properly recoverable against the District.

FOURTH AFFIRMATIVE DEFENSE

(Damages Not Recoverable)

22. Plaintiffs are not entitled to a recovery of attorney's fees as they failed to obtain a remedy in excess of the District's statutory offer in the due process proceeding.

FIFTH AFFIRMATIVE DEFENSE

(Laches, Waiver, Estoppel, Unclean Hands)

23. Plaintiffs are barred from relief under the Complaint by the equitable doctrines of laches, waiver, estoppel and/or unclean hands from asserting the claims alleged in the Complaint against the District.

SIXTH AFFIRMATIVE DEFENSE

(Immunity and Privilege)

24. Plaintiffs are barred from asserting the claims alleged in the Complaint against the District as its actions were, at all times, privileged, immune, justified, made in good faith and/or otherwise lawful.

SEVENTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

25. Plaintiffs have had, and continue to have, the ability and opportunity to mitigate the damages alleged in the Complaint and have failed to take reasonable and necessary steps to mitigate same.

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EIGHTH AFFIRMATIVE DEFENSE

(Plaintiffs Not Prevailing Party)

26. Plaintiffs are not entitled to an award of attorney's fees against the District as they were not the prevailing party in the underlying due process proceeding and the District prevailed on all issues in the underlying action.

NINTH AFFIRMATIVE DEFENSE

(Other Defenses)

27. The District presently has insufficient knowledge or insufficient information upon which to form a belief as to whether it may have additional, yet unasserted, affirmative defenses. The District therefore reserves the right to assert additional affirmative defense in the event discovery indicates it would be appropriate.

REQUEST FOR RELIEF

WHEREFORE, the District prays that:

1. That Plaintiffs take nothing by reason of their Complaint;
2. That Plaintiffs' Complaint be dismissed with prejudice;
3. That the District recover its attorney's fees and expenses incurred herein;
4. That the District be awarded its costs of suit incurred herein; and
5. That this Court award such other and further relief it deems just and proper.

DATED: June 30, 2008

Respectfully submitted,

FAGEN FRIEDMAN & FULFROST, LLP

By: ______________________
Dean T. Adams
Attorneys for Defendant San Diego Unified School District

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 1 Civic Center Drive, Suite 300, San Marcos, California 92069.

On June 30, 2008, I served the following document(s) described as **DEFENDANT SAN DIEGO UNIFIED SCHOOL DISTRICT'S ANSWER TO COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

XX **BY FAX TRANSMISSION:** I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was 760-304-6011. No error was reported by the fax machine that I used.

XX **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Fagen Friedman & Fulfrost's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2008, at San Marcos, California.

Crystal A. Dunn

Crystal A. Dunn

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